THE HON'BLE SRI JUSTICE BILAL NAZKI

AND

THE HON'BLE SRI JUSTICE G.CHANDRAIAH

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WRIT PETITION NO.4399 OF 2006

Date: 27-03-2006

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Between:

Allu Rama Devi …Petitioner

And

The Collector & District Magistrate

And another …Respondents

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WRIT PETITION NO.4399 OF 2006

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O R D E R (Per the Hon'ble Sri Bilal Nazki, J):

This writ petition has been filed by the wife of one Nageswara Rao, who has been detained in terms of an order passed by the District Collector, East Godavari, on 04-02-2006, in terms of the provisions of the Andhra Pradesh Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 (for brevity hereinafter referred to as "the Act"). After notice, counter has been filed and we have heard learned counsel for the petitioner as well as Ms.Mohana, Advocate, appearing for the learned Advocate General.

In the grounds of detention, three crimes have been taken into consideration by the District Magistrate for arriving at the satisfaction that the detenu needed to be detained in terms of the provisions of the Act. The first crime relates to 14-12-2004 and it was registered in Crime No.758/2004-2005 under the provisions of the A.P. Prohibition and Excise Act. The second instance relates to a case registered on 25-02-2005. This also relates to an alleged offence in Crime No.968/2004-2005 registered under the provisions of the A.P. Prohibition and Excise Act and the third instance relates to an alleged offence registered on 03-10-2005 in Crime No.673/2005-2006. Learned counsel for the petitioner submits that the first case registered on 14-12-2004 has been allegedly committed eight months prior to the last crime, which was registered on 03-10-2005 and the gap between the order of detention and the first offence is about 14 months. Therefore, all the grounds are too remote in point of time. Hence, the detention could be quashed on this ground alone. He further submits that the grounds of detention under the Act are not separable, which has been held by this Court in number of decisions. However, the learned counsel appearing for the learned Advocate General submits that the time gap between the first case and the order of detention cannot be taken as a ground for quashing the order of detention as has been held by the Supreme Court in ***Collector & District Magistrate, W.G. District, Eluru and others vs. Sangala Kondamma.*** We had an occasion to consider this judgment of the Supreme Court in another case reported in ***Doddi Sharada v. Collector and District Magistrate, Hyderabad and others.*** During the hearing of that case, it was pointed out that there was a judgment of the Supreme Court in ***Kamalakar Prasad Chaturvedi v. State of M.P. and another,*** which was a judgment of three-Judge Bench of the Supreme Court, whereas the judgment in ***Sangala Kondamma's case (1 supra)*** was only by a two-Judge Bench of the Supreme Court. The judgment in ***Kamalakar Prasad Chaturvedi's case (3 supra)*** had not been considered by the Supreme Court while passing the judgment in ***Sangala Kondamma's case (1 supra)***. In ***Kamalakar Prasad Chaturvedi's case (3 supra)*** the Supreme Court in paragraph 12 of the judgment held as under:

> *"The first two incidents which are of 1978 and 1980 are mentioned as grounds of detention in the order dated 6-5-1983. There can be no doubt that these grounds especially*

Ground No.1 relating to an incident of 1978 are too remote and not proximate to the order of detention. It is not open to the Detaining Authority to pick up an old and stale incident and hold it as the basis of an order of detention under Section 3(2) of the Act. Nor it is open to the Detaining Authority to contend that it has been mentioned only to show that the detenu has a tendency to create problems resulting in disturbance to public order, for as a matter of fact it has been mentioned as a ground of detention. Now there is no provision in the National Security Act, 1980 similar to Section 5-A of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 which says that where a person has been detained in pursuance of an order of detention under sub-section (1) of Section 3 which has been made on two or more grounds, such order of detention shall be deemed to have been made separately on each of such grounds and accordingly (a) such order shall not be deemed to be invalid or inoperative merely because one or some of the grounds is or are vague, non-existent, non-relevant, not connected or not proximately connected with such persons or invalid for any other reason and it is not therefore possible to hold that the Government or officer making such order would have been satisfied as provided in sub-section (1) of Section 3 with reference to the remaining ground or grounds and made the order of detention and (b) the Government or officer making the order of detention shall be deemed to have made the order of detention under the said sub-section (1) after being satisfied as provided in that sub-section with reference to the remaining ground or grounds. Therefore, in the present case it cannot be postulated what view would have been taken by the Detaining Authority about the need to detain the petitioner under Section 3(2) of the Act if he had not taken into account the stale and not proximate Grounds 1 and 2 into consideration in arriving at the subjective satisfaction. We are, therefore, of the opinion that the petitioner's detention is unsustainable in law. Accordingly, we quash the order of detention and direct that the petitioner be set at liberty forthwith."

Following the same judgment, we allow this writ petition, quash the order of detention and direct the release of the detenu forthwith, if not needed in any other case.

(Bilal Nazki, J)

27th March, 2006

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(G.Chandraiah, J)

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